
(1994) 10 SHI CK 0015
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 176 of 1992

Gaberiel India Limited

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 03-10-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1), 12(5)

Citation : (1995) 2 LLJ 975 : (1995) 1 ShimLC 357

Hon'ble Judges : Gulab C. Gupta, C.J.;A.L. Vaidya, J

Bench : Division Bench

Advocate : S.S. Kanwar and R.S. Mittal, for the Appellant; Indar Sing, A.G. For Respondent No. 1 and Ramakant Sharma Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Gulab C. Gupta, C.J.—There was an industrial dispute between the petitioners and respondent No. 3 regarding slow down and lockout which has been referred for adjudication to the Labour Court, Shimla by order dated February 15, 1991 (Annexure P-4) passed by the respondent No. 1. Thereafter, proceedings before the respondent-Labour Court started. Issues based on the pleadings were framed and reference fixed for evidence of parties. On March 7, 1992, one Vinod Malhotra was to be examined as a witness in the case when the petitioners filed an application requesting that the issues be re-framed and issue No. 4 be decided as a preliminary issue. The respondent-Labour Court handed over copy of the said application to the respondent No. 3 for filing reply by the next date. The Labour Court did not examine Shri Malhotra on that date and fixed the case for April 4, 1992. Order passed in this behalf is Annexure P-9. It is at this stage that the petitioners rushed to this Court by filing the present writ petition and challenging not only the validity of order dated March 7, 1992 passed by the respondent-Labour Court (Annexure P-9), but also the validity of the reference made by the respondent-State Government.

2. Having heard the learned Counsel for the parties, we are of the view that the

petition is devoid of substance.

3. As regards validity of the reference, the only submission of the learned Counsel for the petitioners is that it does not mention Section 10(1) of the Industrial Disputes Act, 1947 (referred to as "The Act" for short) and refers only to Section 12(5) thereof and for that reason, it is illegal. The submission more particularly appears to be that Section 10(1) being the only provision empowering the Government to make reference, its omission invalidates the reference. As regards law, there can be no doubt that Section 10(1) is the only source of authority of the Government to make a reference. Section 12(5) is the provision which enables the Government to consider whether to make a reference or not to make a reference and that too has to be done on the basis of the report received from the Conciliator. Once, however, the Government decides to make a reference, it has to resort to Section 10(1) for the purpose as there is no other provision in that behalf in the Act. This, however, does not mean that mere omission of Section 10 from the order of reference would invalidate the reference order. In the instant case, the matter has been considered by the respondent-State u/s 12(5) of the Act and the said fact is mentioned in the order of reference. It is, therefore, clear that the respondent-Government had lawfully decided to make a reference. What, however, is missing in the order of reference is Section 10(1) of the Act. Order of reference has to be understood and interpreted objectively. It is the substance that matters and not the form. Mere omission of Section 10 of the Act would, therefore, not be of any consequence. Reference to decision of the Supreme Court in *State of Bombay Vs. K.P. Krishnan and Others*, is wholly inapt in the context of submission made in this Court. The aforesaid case clarifies the law on the subject and places it beyond any doubt that the reference can be made only u/s 10 of the Act and not u/s 12(5) of the Act. The submission considered by the Supreme Court was that Section 12(5) is an independent provision and can be resorted to by the Government for making a reference independently of Section 10 thereof. That argument was not accepted and it was held that Section 12(5) is the power in the Government to consider the matter from the point of view of either making a reference to the Labour Court or not making such a reference. If in this process Government decides not to make a reference, it has to communicate its reasons for the same. If, however, it decides to make a reference, it has to rely on Section 10 of the Act to do so. In the instant case, Government has decided to make a reference and hence it must be assumed that the power u/s 10(1) of the Act which is the only power available to the Government has been exercised. Mere non-mentioning of a particular provision in the order of reference would not, in our opinion, invalidate the reference.

4. It was thereafter submitted that reference is also invalidated because the subject-matter of industrial dispute is covered by earlier settlement, Annexure P-I. This is a question of fact. Whether the settlement really exists or not or whether any notice terminating the same has been given are matters requiring consideration on the basis of evidence to be adduced by the parties. This

controversy can more effectively be decided by the Labour Court which is seized of the matter. The Labour Court will no doubt look into the pleadings of the parties and give them the opportunity to produce such oral or documentary evidence in support of their contentions as they may like. The learned Counsel for the petitioners has, however, relied on *Management of the Management of Bangalore Woollen, Cotton and Silk Mills Co. Ltd. Vs. The Workmen and Another*, in support of his aforesaid submission and requested this Court to decide the controversy here. A perusal of the said judgment would indicate that the matter in the said case had been decided by the Labour Court which has taken the view that the settlement did not affect the reference. The said view was confirmed by the High Court. It was thereafter that the matter was taken to the Supreme Court and decided on the basis of facts available on record. In the instant case, the matter has not yet been decided by the Labour Court and hence it would not be proper for this Court to decide the said factual controversy. The said decision no doubt lays down the law that if in a reference, the Labour Court comes to the conclusion that the subject-matter of reference is covered by an earlier settlement or award, those matters would not be permitted to be agitated again. There is no reason for us to hold that the Labour Court would not take into consideration this aspect of the matter, while deciding the reference. In this view of the matter, we find no illegality in the impugned order.

5. It was thereafter submitted that the Labour Court by not deciding to try issue No. 4 as a preliminary issue before deciding other issues, had committed an illegality, which deserves to be corrected by this Court, while exercising its extraordinary writ jurisdiction. A perusal of Annexure P. 9 would indicate that the petitioners filed the application on the date of examination of witnesses. The Presiding Officer of the Labour Court gave a copy of the said application to the other side for filing its reply by the next date. It has neither decided the application nor refused to treat issue No. 4 as a preliminary issue or decide the same as alleged. Indeed, the Labour Court in the context of an application for re-framing issues could not have given any such decision. Indeed, as far as Labour Court's adjudication is concerned, piecemeal recording of evidence and decision has got to be avoided. No injustice will be done to any party if the trial of all issues proceed together. But at the time of writing the award, the Labour Court should first decide the preliminary issue, if any, and proceed to decide other issues only when decision on preliminary issue may not be sufficient to dispose of the reference. Learned Counsel for the petitioners has relied on *The Rawalpindi Victory Transport Co. (Private), Ltd. Vs. Labour Court and Others*, and *Voltas Limited Vs. Its Workmen*, to submit that preliminary issue should be decided first. These cases, in our opinion, do not lay down any law of universal application. They really follow the existing law that if the Court is prima facie of the opinion that a decision on preliminary issue is likely to dispose of the entire case, the issue should be tried as a preliminary issue and not otherwise. Considering the nature of issue No. 4 which relates to the validity of reference in the context of submissions of the petitioners, it does not appear to be a case

where it will be in the interest of justice to try and decide issue No. 4 before trying and deciding other issues. Under the circumstances, this Court would not find any justification for the submission aforesaid.

Petition fails and is dismissed.